

PHILADELPHIA COURT OF COMMON PLEAS  
PETITION/MOTION COVER SHEET

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at <a href="http://courts.phila.gov">http://courts.phila.gov</a>	

ROBERT HOLTON and FINAL DESTINATION AUTO WRECKING AND SALVAGE, INC.

VS.

CITY OF PHILADELPHIA

INDICATE NATURE OF DOCUMENT FILED:

☒ Petition (Attach Rule to Show Cause) ☐ Motion  
☐ Answer to Petition ☐ Response to Motion

CONTROL NUMBER:

**025142**

(RESPONDING PARTIES MUST INCLUDE THIS  
NUMBER ON ALL FILINGS)

**FEBRUARY 2018**

Term, \_\_\_\_\_

Month

Year

No. **001429**

Name of Filing Party:

Robert Holton and Final Destination Auto Wrecking and Salvage, Inc.

(Check one)

☐

Plaintiff

☐

Defendant

(Check one)

☒

Movant

☐

Respondent

Has another petition/motion been decided in this case?

☐ Yes

☐ No

Is another petition/motion pending?

If the answer to either question is yes, you must identify the judge(s):

☐ Yes

☐ No

TYPE OF PETITION/MOTION (see list on reverse side)

**EMERGENCY PETITION FOR PRELIMINARY INJUNCTION**

PETITION/MOTION CODE

(see list on reverse side)

**PTEMG**

ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):

**I. CASE PROGRAM**

Is this case in the (answer all questions):

**A. COMMERCE PROGRAM**

Name of Judicial Team Leader: \_\_\_\_\_

Applicable Petition/Motion Deadline: \_\_\_\_\_

Has deadline been previously extended by the Court?

☐ Yes ☐ No

**B. DAY FORWARD/MAJOR JURY PROGRAM — Year \_\_\_\_\_**

Name of Judicial Team Leader: \_\_\_\_\_

Applicable Petition/Motion Deadline: \_\_\_\_\_

Has deadline been previously extended by the Court?

☐ Yes ☐ No

**C. NON JURY PROGRAM**

Date Listed: \_\_\_\_\_

**D. ARBITRATION PROGRAM**

Arbitration Date: \_\_\_\_\_

**E. ARBITRATION APPEAL PROGRAM**

Date Listed: \_\_\_\_\_

**F. OTHER PROGRAM: \_\_\_\_\_**

Date Listed: \_\_\_\_\_

**II. PARTIES (required for proof of service)**

(Name, address and **telephone number** of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

Jack M. Bernard, Esquire  
1515 Market Street, Suite 1510  
Philadelphia, PA 19102  
215-665-0666

City of Philadelphia  
Attn: Law Department  
1515 Arch Street, 10th Floor  
Philadelphia, PA 19102

Holton Vs City Of Philadelphia Law Dept-PTMIS



18020142900003

**III. OTHER**

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

*Jack M. Bernard*  
(Attorney Signature/Unrepresented Party)

February 15, 2018

(Date)

JACK M. BERNARD

(Print Name)

26643

(Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

001429

Court of Common Pleas of Philadelphia  
County Trial Division  
**Civil Cover Sheet**

For Office of Judicial Records Use Only (Docket Number)

**FEBRUARY 2018** 1429

PLAINTIFF'S NAME <b>ROBERT HOLTON</b>		DEFENDANT'S NAME <b>CITY OF PHILADELPHIA - LAW DEPT</b>	
PLAINTIFF'S ADDRESS 408-4087 Richmond Street a/k/a 3950 N. Delaware Avenue, Philadelphia, PA 19137		DEFENDANT'S ADDRESS 1515 Arch Street, 10th Floor, Philadelphia, PA 19102	
PLAINTIFF'S NAME FINAL DESTINATION AUTO WRECKING AND SALVAGE, INC., a Pennsylvania business corporation		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS 408-4087 Richmond Street a/k/a 3950 N. Delaware Avenue, Philadelphia, PA 19137		DEFENDANT'S ADDRESS	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS <b>2</b>	TOTAL NO. OF DEFENDANTS <b>1</b>	COMMENCEMENT OF ACTION <input type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input checked="" type="checkbox"/> Petition Action <input type="checkbox"/> Transfer From Other Jurisdictions <input type="checkbox"/> Notice of Appeal	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input checked="" type="checkbox"/> Petition <input checked="" type="checkbox"/> Other: <b>EMERGENCY PETITION</b>		
CASE TYPE AND CODE (SEE INSTRUCTIONS) <b>PRELIMINARY INJUNCTION</b>			
STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS) <b>N/A</b>			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? Yes <input type="checkbox"/> No <input type="checkbox"/>	
TO THE OFFICE OF JUDICIAL RECORDS: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY <b>JACK M. BERNARD, ESQUIRE</b>		ADDRESS (SEE INSTRUCTIONS) 1515 Market Street, Suite 1510 Philadelphia, PA 19102	
PHONE NUMBER <b>215-665-0666</b>	FAX NUMBER <b>215-665-0143</b>		
SUPREME COURT IDENTIFICATION NO. <b>26643</b>		E-MAIL ADDRESS <b>jackbernard@verizon.net</b>	
SIGNATURE <i>Jack M. Bernard</i>		DATE <b>February 15, 2018</b>	

**JACK M. BERNARD, ESQUIRE**

Attorney I.D. 26643  
1515 Market Street, Suite 1510  
Philadelphia, PA 19102  
Phone (215) 665-0666  
Fax (215) 665-0143  
[jackbernard@verizon.net](mailto:jackbernard@verizon.net)

Attorney for Petitioners

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**ROBERT HOLTON**

4085-4087 Richmond Street  
a/k/a 3950 N. Delaware Avenue  
Philadelphia, PA 19137  
and

**FINAL DESTINATION AUTO WRECKING  
AND SALVAGE, INC., a Pennsylvania  
business corporation**

4085-4087 Richmond Street  
a/k/a 3950 N. Delaware Avenue  
Philadelphia, PA 19137

Petitioners,

vs.

**CITY OF PHILADELPHIA  
ATTN: LAW DEPARTMENT**  
1515 Arch Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19102

Respondents

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
CIVIL TRIAL DIVISION**

**FEBRUARY TERM, 2018**

**NO. 001429**

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**EMERGENCY PETITION FOR PRELIMINARY INJUNCTION**

1. Petitioner, Robert Holton, is an individual in the scrap metal and salvage business at the address stated in the caption of this Complaint. Petitioner owns portions of real estate adjacent or contiguous thereto.

2. Petitioner, Final Destination Auto Wrecking and Salvage, Inc., is a Pennsylvania business corporation also engaged in the scrap metal and salvage business at the address stated in

the caption of this Complaint.

3. Respondent, City of Philadelphia is a municipal corporation that receives process at the address stated in the caption of this Complaint, and maintains a Law Department at that address.

4. For a period of approximately twelve (12) years commencing in 2006, Defendant has attempted to acquire portions of real estate owned by Holton, ostensibly for development, located at the Richmond Street/Delaware Avenue address.

5. In the course of its acquisition efforts, deeds have been recorded mis-describing the metes and bounds of property alleged to be owned by Respondent, requiring Holton to engage counsel in order to correct the mis-description at great expense.

6. In or around July 2014, Respondent ratcheted up its efforts by initiating “Cease Operations” proceedings against Holton and a tenant, Kevin Creedon, that concerned land located on Richmond Street between the Frankford Creek and railroad tracks for Conrail operations (hereafter “the Frankford Creek Right of Way”).

7. Thereafter, as a result of intervention by Conrail, Respondent relaxed its efforts concerning the Frankford Creek Right of Way until on or about March 2, 2016, when Defendant served multiple code violations with intent to cause Holton and Final Destination to cease operations.

8. Holton appealed the alleged violations to the City of Philadelphia License and Inspection Review Board, and sought a preliminary injunction to maintain the status quo pending that appeal.

9. In the course of a hearing upon the petition for preliminary injunction, Case No.

17-0401646, *Holton v. City of Philadelphia, et al.*; Respondent offered evidence that Petitioners were polluting the Frankford Creek waterway and thereby contaminating drinking water.

Relying thereupon, this Court denied Petitioners' petition for preliminary injunction.

10. Petitioners contacted the Pennsylvania Department of Environmental Protection and the United States Environmental protection Agency regarding the pollution claims, and was assured in writing that the property owned by Petitioners at the Frankford Creek Right of Way was free of contaminants, including the watercourse. (At that time, Petitioners appeal was before the Licenses and Inspections Review Board. Enforcement activity was suspended pending the outcome of the appeal, so that the petition for a preliminary injunction became moot.) The action at 2017-04-01646 was discontinued without prejudice.

11. While counsel was waiting in or around Room 280, City Hall, in order to be assigned to a judge for hearing upon the petition for preliminary injunction, he was engaged in discussion with an attorney for Respondent with a co-counsel. The attorney, a senior member of the Law Department was informally questioned by Petitioners' counsel regarding what were characterized as made-up violation notices, where it was apparent to the Department of Licenses and Inspection inspectors that there were no violations. Petitioners' counsel replied in the presence of his co-counsel that if Petitioners deeded the portion of the Frankford Creek Right of Way that the City of Philadelphia sought and had been seeking, the violation notices would "go away". This offer was repeated a second time during the wait, again in the presence of co-counsel.

12. Holton was represented at the hearing before the License and Inspection Review Board by other counsel who reported to undersigned counsel that he had never tried a better case

and that the City's witnesses were impeached without any remaining credibility.

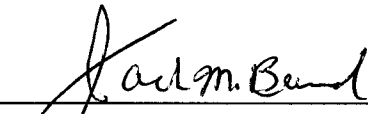
13. By unanimous vote, the License and Inspection Review Board affirmed the decision(s) under review. That decision has been appealed to the Court of Common Pleas.

14. Attached hereto and marked as Exhibit "A" is Respondent's "Urgent Notice" dated February 1, 2018 threatening to remove from the land all equipment, materials, vehicles, structures, appliances and waste on that land," and in default of Petitioners doing so, "secure the land from entry after making the said removals and disposals, the cost of which will be billed to you, Robert Holton."

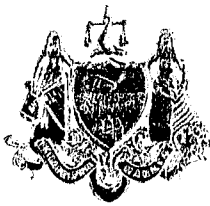
15. Petitioners have no adequate remedy at law at this time. Petitioners will suffer an irreparable injury if their business is destroyed as the City obviously intends.

**WHEREFORE**, Petitioners pray for entry of an order for a preliminary injunction and for issuance of a Rule upon Respondent, City of Philadelphia, to show cause why the injunction should not be continued in force until a final hearing.

Dated: February 14, 2018

  
\_\_\_\_\_  
JACK M. BERNARD, ESQUIRE  
Attorney for Petitioners

# EXHIBIT “A”



# CITY OF PHILADELPHIA

DEPARTMENT OF LICENSES & INSPECTIONS  
1130 Municipal Services Building  
1401 John F. Kennedy Boulevard  
Philadelphia, PA 19102-1687

DAVID J. PERRI, P.E.  
Commissioner

February 1, 2018

Mr. Robert Holton  
4085 Richmond Street  
Philadelphia, PA 19137

Mr. Kevin Creedon  
4087 Richmond Street  
Philadelphia, PA 19137

## URGENT NOTICE


Re: Action to be taken upon the Cease Operations Orders for uses and operations within the Frankford Creek Right-of-Way at Richmond Street (a/k/a 4087 Richmond St)

Uses and operations upon the property referenced above as 4087 Richmond Street, which land has been determined by Ordinance dated December 19, 1951 to be part of the Frankford Creek Right-of-Way, have been Ceased by Order of the Department of Licenses ("L&I") on April 12, 2017. A challenge seeking a stay this Cease Operations was made to the Philadelphia Court of Common Pleas, which was denied with an Order which set forth that no stay shall be granted where there exists a "condition of immediate danger or hazard to health, safety or welfare which requires immediate compliance." Subsequently, an administrative appellate review of the case was sought before the Philadelphia Board of License and Inspections Review, which upon a hearing on August 30, 2017 it affirmed the actions of L&I. There is no stay of the Cease Operations Order, and any use and operations conducted upon the land are in violation of the law.

The outstanding violations issued under L&I case number 574778 for the location include, but are not limited to, the following: no Zoning/Use Permits, no Operations Permit, and no Business Operations Licenses exist for Salvage, Reclamation, Storage, Vehicle Repair, Sales of Vehicles and/or Vehicle Parts upon the land. Also, violations were cited for conditions arising under the Electrical and Fire Codes, which implicate the contamination and environmental hazards caused to the land as well as to the runoff water of Frankford Creek waterway.



This Notice requires you to immediately comply with the Cease Operations Order and to remove from the land all equipment, materials, vehicles, structures, appliances and waste on that land that are incident to your unlawful use. You must make the said removals and restore the land free and clear of same no later than February 16, 2018. Note that disposals of certain materials, e.g. tires and fluids, require documentation and retention of disposal records. If you fail to make the said required removals and to vacate the Right-of-Way, the City will secure the land from entry after making the said removals and disposals, the cost of which will be billed to you, Robert Holton.

  
David J. Perri  
Commissioner

cc: Carlton Williams, Commissioner  
Streets Department

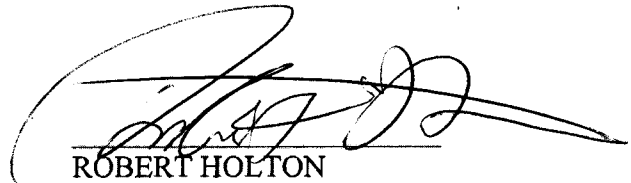
cc: Darin L Gatti PE, Chief Engineer  
President, Board of Surveyors  
Streets Department

cc: Bridget Greenwald, Commissioner  
Public Property Department

**VERIFICATION**

I, Robert Holton, individually and on behalf of Final Destination Auto Wrecking and Salvage, Inc., a Pennsylvania corporation, hereby verify that the statements made in the foregoing **Emergency Petition For Preliminary Injunction** are true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of §18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



ROBERT HOLTON

DATED: 2-15-2018

**JACK M. BERNARD, ESQUIRE**

Attorney I.D. 26643

1515 Market Street, Suite 1510

Philadelphia, PA 19102

Phone (215) 665-0666

Fax (215) 665-0143

[jackbernard@verizon.net](mailto:jackbernard@verizon.net)

Attorney for Petitioners

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**ROBERT HOLTON**

and

**FINAL DESTINATION AUTO WRECKING  
AND SALVAGE, INC., a Pennsylvania  
business corporation**

Petitioners,

vs.

**CITY OF PHILADELPHIA  
ATTN: LAW DEPARTMENT**

Respondents

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
CIVIL TRIAL DIVISION**

**FEBRUARY TERM, 2018**

**NO.**

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**ORDER FOR PRELIMINARY INJUNCTION AND RULE**

**AND NOW**, this \_\_\_\_ day of \_\_\_\_\_, 2018, upon consideration of the averments of the verified Petition of Robert Holton and Final Destination Auto Wrecking and Salvage, Inc., testimony of Robert Holton witnesses for Respondent, City of Philadelphia and arguments of counsel, it is

**ORDERED** that relief requested in the Petition is **GRANTED**. Respondent, City of Philadelphia is preliminarily enjoined from interfering with Petitioner's possession and use of premises located and described as 4085-4087 Richmond Street, a/k/a 3950 N. Delaware Avenue, until further order of the Court.

BY THE COURT:

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J.

